

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1277-03  
Bill No.: HCS for HB 472  
Subject: Political Subdivisions: Utilities, Right-of-way  
Type: Original  
Date: March 20, 2001

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**FISCAL SUMMARY**

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
<b>Total Estimated Net Effect on <u>All</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
<b>Local Government*</b>	<b>(Unknown)</b>	<b>(Unknown)</b>	<b>(\$Unknown)</b>

\* Fiscal impact is estimated to exceed \$1,000,000 annually.

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 6 pages.

## FISCAL ANALYSIS

### ASSUMPTION

Officials of the **Department of Economic Development-Public Service Commission, and Office of Public Counsel**, stated there would be no fiscal impact to their department.

Officials of the **Missouri Department of Transportation** stated they are not included in the definition of “political subdivision”, therefore, this proposal would not apply to their department.

Officials of the **Missouri Department of Conservation** stated this proposal would not have fiscal impact on MDC funds.

Officials of the **Office of Administration- Division of Design and Construction** stated their would be no fiscal impact to their division.

Officials of the **Department of Natural Resources** stated that their department manages the state park system and are responsible for maintaining certain roads within the state park system. Depending upon the definition/intent of the term public right-of-way, the department may be fiscally impacted.

Officials of the **City of Kansas City** stated this proposal places new requirements and procedures on municipalities. Officials stated there would be arbitration cost of \$5,000 per incident. Officials estimate if 1% of the permit applications would be taken to mandatory binding arbitration, 10 arbitrations per 1000 permits, the cost would be about \$50,000 annually. There would be an increase in overtime cost to comply with the 15 day permit approval deadline. Officials assume that the City would lose revenue from their recently enacted street degradation fee. If utilities do not repair the street curb to curb they must pay a degradation fee. Officials estimate lost revenue at \$1,000,000 to \$1,500,000 annually. Officials stated that this substitute allows a franchise, when required by state or federal law, however, it is unclear that any franchise by a local government is ever required, they are always permitted. Officials assume that there could be cost associated with this lack of clarity.

In response to identical legislation the officials of the **City of St.Louis** stated this proposal places new requirements and procedures on municipalities. Officials stated there would be arbitration cost of \$5,000 per incident. There would be an increase in overtime cost to comply with the 10 day permit approval deadline. Officials estimate costs at \$10,000 annually.

ASSUMPTION (continued)

Officials stated there would be a loss of income from franchise tax revenues from cable operators of approximately \$1.45 million annually, and there would be an annual loss of income of approximately \$13.3 million from Incumbent Local Exchange Carriers and Competitive Local Exchange Carriers. Officials stated the City would lose in-kind services, which, have an estimated annual value of \$891,666. Officials stated that these costs are estimates and the actual fiscal impact is unknown.

Officials of the **City of Springfield** assume this proposal would have fiscal impact to City funds. Officials stated they would lose utility franchise fee payments as no franchise would be allowed to require rental for rights-of-way use over and above the right-of-way permit fee as defined by this proposal. City Officials estimate the loss of revenue from franchise fees at \$19.4 million in 2002, \$20 million in 2003, and \$22 million in 2004. Officials assume the actual loss of revenues of in-kind services, and other requirements is unknown. Officials also stated they would have new costs from arbitration and litigation expenses, street and sidewalk repairs, delays in work, etc. are estimated to cost the City as much as \$12.1 million in 2002; \$12.3 million in 2003; and \$12.4 million in 2004.

Officials of the Office of the **Director of Administration of St. Louis County** stated that this proposal would deprive the county of revenues annually that would be in the millions of dollars. Officials stated that the county currently receives franchise fees totaling more than 2.5 million dollars per year from "public utility right-of-way users". This proposal jeopardizes the County's ability to collect franchise fees from new entrants as well as the many rights-of-way users whose franchises will expire in the next 3 years. Officials identified the following activities that would create costs for the county. 1) Replacement of in-kind services which are currently included in the County's franchise with DTI, and County's cable franchises; 2) Personnel costs due to staff time involved in administrative appeals of denials or revocations of permits; 3) Costs of mandatory arbitration, including County's attorney fees and internal costs, and required payments of external costs of arbitration; 4) Costs of litigation over the meaning of such terms as "unreasonable requirement for entry", and "unlawfully discriminate"; or "grant a preference", and whether certain costs are "substantiated" or properly "allocated". Officials concluded by stating that losses for each fiscal year are expected to be over 1 million dollars, since the bill jeopardizes the County's ability to collect franchise fees from new entrants as well as the many right-of-way users whose franchises will expire in the next 3 years.

**Oversight will show loss of revenue to local government, and increased cost of street maintenance, etc. as (unknown).**

<u>FISCAL IMPACT - State Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
	\$0	\$0	\$0
<u>FISCAL IMPACT - Local Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
<b><u>Income</u></b> to Cities from Permit Fees	Unknown	Unknown	Unknown
<b><u>Loss of income</u></b> to Cities from Franchise Fees	(Unknown)	(Unknown)	(Unknown)
<b><u>Cost</u></b> to Cities from Arbitration fees, street repairs etc.	(Unknown)	(Unknown)	(Unknown)
<b>Estimated Net Effect to Local Government*</b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>

**\* Oversight assumes that, on a statewide basis, the fiscal impact to local governments would exceed \$1,000,000 annually. Income from permit fees is not expected to offset costs or loss of income, therefore Net Effect is shown as (Unknown).**

FISCAL IMPACT - Small Business

Small business in the excavation business would be expected to pay a permit fee when excavating on municipal rights-of-way.

## DESCRIPTION

This substitute outlines procedures for public utility right-of-way user access to the public right-of-way. Political subdivisions are prohibited from granting any new franchise for cable television service that overlaps an area served by an existing cable television franchise, unless the overlapping franchise is granted on terms and conditions that are no more or less favorable or burdensome than those of the existing franchise.

Political subdivisions may by ordinance require public utility right-of-way users to obtain excavation permits and to submit plans for anticipated construction projects requiring excavation in the public right-of-way. After excavation, a right-of-way user must restore the right-of-way to its prior condition.

Right-of-way permits may be denied or revoked for certain reasons; a review process of denied or revoked permits by the governing body of the political subdivision is provided. Right-of-way permit fees must reflect the actual costs of managing the public right-of-way and be allocated among all users in a nondiscriminatory manner. Political subdivisions must not unlawfully discriminate among users of the right-of-way, grant preference to any right-of-way user over another, or create unreasonable requirements for access to the right-of-way. Political subdivisions are prohibited from collecting a right-of-way fee through the provision of in-kind services by a public utility right-of-way user, except from cable television service providers as authorized by federal law.

The public utility right-of-way user is responsible for all acts or omissions of contractors or subcontractors used for excavating in the public right-of-way. Political subdivisions may require public utilities to obtain right-of-way permits prior to any excavation or work performed within the public right-of-way after August 28, 2001. Nothing in the substitute relieves a political subdivision of any obligations under an existing franchise.

The substitute has an emergency clause.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Economic Development- Public Service Commission  
Office of Public Counsel  
Department of Natural Resources  
Missouri Department of Transportation  
Missouri Department of Conservation  
Office of Administration- Division of Design and Construction  
Director of Administration of St. Louis County  
City of Kansas City  
City of St. Louis  
City of Springfield

A handwritten signature in black ink, appearing to read "Jeanne Jarrett". The signature is stylized with a large, looped initial "J" and a cursive script.

Jeanne Jarrett, CPA  
Director  
March 20, 2001